



## REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 9:00am E

COUNCIL MEETING 12/15/2011

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 15, 2011

FROM: JERRY P. DYER, Chief of Police  
Police Department

BY: KEITH L. FOSTER, Deputy Chief  
Police Department - Investigative Services Division

SUBJECT: PROPOSE INTERIM URGENCY ORDINANCE PLACING A MORATORIUM ON THE  
OUTDOOR CULTIVATION OF MARIJUANA IN THE CITY OF FRESNO.

**RECOMMENDATIONS**

It is recommended that the Council adopt an interim urgency ordinance placing a moratorium on the outdoor cultivation of marijuana in the city of Fresno. This interim urgency ordinance is pursuant to Government Code Section 65858, pending the development of standards and regulations relating to cultivation and dispensing as a new land use standard while protecting the health and safety of the citizens of the city of Fresno.

**EXECUTIVE SUMMARY**

There is insufficient time for the city to adopt a regular, non-urgency ordinance applicable to the cultivation of marijuana. If adopted as an urgency measure, pursuant to the provision of Government Code Section 65858, the proposed ordinance shall become effective immediately. The proposed ordinance shall remain in full force and effect until January 14, 2012 (45 days), unless earlier terminated or extended.

Currently, the city has no explicit rules or regulations governing the outdoor cultivation of marijuana. Numerous medical and non-medical marijuana cultivation sites have been established in the incorporated areas of the city. There have been violent incidents associated with the cultivation of marijuana, including reports of five (5) shootings within the City of Fresno, one resulting in death. The police department believes numerous thefts and physical confrontations between marijuana growers and theft suspects are unreported. As a result, marijuana growers are constantly vigilant with many possessing handguns and/or rifles to protect their fields. These situations negatively affect the health, safety and welfare of the city's residents and businesses.

Unless adopted as an emergency ordinance, marijuana cultivation could occur without any specific regulation and creates a serious health and safety hazard. The Public Works and Planning Departments have received inquiries from prospective marijuana growers about the cultivation in the incorporated areas of the city. Cultivation of medical marijuana requires careful consideration and regulation to prevent a negative impact on nearby residents and businesses. Federal law prohibits the use of marijuana, regardless of the reason for such use; while state law allows for the use of medical marijuana under limited terms and conditions.

This ordinance will allow the city to study the complicated issues related to regulation of medical marijuana cultivation, while protecting the health, safety and welfare of the citizens of Fresno in the interim.

This ban is necessary and appropriate to maintain and protect the public health, safety, and welfare of the citizens of Fresno while researching, drafting and adopting a permanent regulation of outdoor cultivation.

## **BACKGROUND**

The proposed interim urgency ordinance complies with applicable state law while imposing reasonable rules and regulations protecting the public health, safety, and welfare of the residents and businesses within the incorporated areas of the City of Fresno.

Unless adopted, marijuana cultivation can occur without any specific regulation and creates inconsistent and incompatible land use. Marijuana is considered the dried mature processed flowers or buds of the female cannabis plant.

Marijuana raises a number of difficult legal, social, safety, and medical issues for California cities. Marijuana use among adolescent students is increasing after a decade of gradual decline. This increase is perhaps attributable, in part, to conflicting messages imparted by the national debate over drug legalization and criminalization. Federal law prohibits the cultivation and use of marijuana, regardless of the reason for such use. However, California and fifteen other states (plus Washington DC) have legalized the medical use of marijuana. Under current California law, non-medical users, who possess not more than 28.5 grams (1 oz.) of marijuana, other than concentrated cannabis, are guilty of an infraction punishable by a fine of not more than one hundred dollars (Penal Code Section 11357(b)).

### Public Threat to Health, Safety, or Welfare

In 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons, in need of marijuana for medical purposes, to obtain and use marijuana without fear of criminal prosecution under limited and specified circumstances. It specifically exempted patients (or a patient's primary caregiver) from being prosecuted under Health and Safety Code 11357 (possession of marijuana) and 11358 (cultivation of marijuana) for specified amounts.

On January 1, 2004, the California State Legislature enacted Senate Bill (SB) 420 (the Medical Marijuana Program Act) to clarify the scope of *The Compassionate Use Act of 1996* and to allow cities and other governing bodies to adopt and enforce rules, regulations, and laws consistent with SB 420.

The safe distribution of marijuana, as contemplated by the Act, should include the safety of all the citizenry of the city, not just the users of medical marijuana. The goal of the proposed interim urgency ordinance is two-fold: it ensures the safety of both medical marijuana users who cultivate marijuana and non-users who live in close proximity to the marijuana cultivation areas.

Examples of the public threat to health, safety or welfare are as follows:

1. There are numerous reports of violent incidents associated with the cultivation of marijuana, including reports of five shootings within the City of Fresno. One incident resulted in the death of a victim who attempted to steal marijuana plants. The grower, who shot the victim, was convicted of voluntary manslaughter and sentenced to 25 years in prison. This shooting occurred in the 900 block of West Belmont Avenue, directly across from the Fresno Zoo Playland and the paddle boats on Lake Washington inside the zoo.
2. Based on anecdotal evidence received from the narcotics and intelligence units, numerous marijuana-related thefts and physical confrontations between marijuana growers and theft suspects are unreported.

3. As a result, the growers are constantly vigilant with many growers possessing handguns and/or rifles. The chance of an innocent victim, who lives near a marijuana field, being injured by stray gunfire is high.
4. Depending on the type of marijuana harvested and the willingness of a grower to wait for plants to reach an optimum state of ripeness, most outdoor harvesting begins in August and (depending on the weather) ends in late November. The peak harvest is in October. During this time, marijuana buds are heavy with THC (delta-9-tetrahydrocannabinol) resin and produce a strong scent. There is sufficient evidence that marijuana cultivation attracts a considerable amount of non-residents who, by following the scent, drive or walk into these neighborhoods in search of marijuana cultivation fields, i.e., grows. Marijuana-related threats and conflicts involving the growers and their neighbors continue to escalate.
5. The unregulated cultivation of outdoor marijuana close to residences and schools poses a current and immediate threat to public health, safety, and welfare. During the 2010 fall harvest, the Fresno Police Department received 52 complaints from citizens calling on the Narcotics Hotline, specifically complaining of the strong odor of marijuana and increased pedestrian/vehicular traffic. School administrators have complained of students, after they have walked by marijuana fields, of smelling strongly of marijuana. During the current 2011 harvest, the department received 198 complaints from citizens. During the recent annual harvest, the Southeast District administrative supervisor receives approximately three to five marijuana harvest-related complaints per week involving thirteen grows.
6. California's medical marijuana laws have unwittingly created a profitable cultivation industry fueled by high profitability and high demand. Marijuana production requires little investment and produces large profits. Marijuana costs approximately \$75.00 per pound to produce and can be sold for up to \$6,000 per pound at the wholesale level, depending on the quality of the processed marijuana. As a result, there is significant interest in developing illegal (but highly-profitable) interstate marijuana distribution rings from California to the other 34 non-medical use states. Many marijuana grows are nothing more than profit making schemes.

## **PROPOSED ORDINANCE**

Nothing contained in the proposed interim urgency ordinance conflicts with Federal law as enumerated in the Controlled Substances Act, Title 21, U.S.C. Section 841, nor does it permit any activity that is prohibited under that Act. Furthermore, nothing in the proposed ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana for non-medical purposes, or (3) allow any activity relative to the cultivation, distribution, and/or consumption of marijuana that is otherwise illegal.

There are several California cities that currently are working on or have moratoriums on medical marijuana cultivation, they are: Anderson, Live Oak, Long Beach Redding, South Lake Tahoe and Tracey.

California cities with permanent bans are San Bernadino, Moraga, and Lakespoint.

The proposed interim urgency ordinance enacts a temporary prohibition of outdoor cultivation of marijuana in all districts in the incorporated areas of the city of Fresno. The Department intends to seek a permanent ban though an amendment to the municipal code. The schedule for the permanent ban is based on the assumptions noted below:

1. Chief Dyer to send a letter to Interim Director Mark Scott requesting initiation of the text amendment.
2. December 2, 2011: Interim Director Mark Scott formally initiates the text amendment process on or prior to this date. PD routes the matter to review.
3. December 8, 2011: Routing completed and comments returned from reviewing departments. Processing and CEQA review begins.
4. December 9, 2011: PD determination whether a "No Possibility" or a statutory/categorical exemption could be used based upon routing comments, etc. If this option cannot be used, the process may be extended as necessary for the Initial Study and Negative Declaration/Mitigated Negative Declaration or even in the event an EIR is needed.
5. December 24, 2011-January 2, 2012: Mandatory furlough, holiday, etc.
6. January 4, 2012: General deadline for PD to submit staff report, documents and title to DARM for inclusion in the Planning Commission agenda and packet.
7. January 11, 2012: Planning Commission hearing and recommendation to City Council.
8. January 16, 2012: General deadline to submit agenda title to Airports Land Use Commission (COG).
9. January 23, 2012: General deadline to submit staff report documentation to COG.
10. February 6, 2012: Review and recommendation by Airports Land Use Commission (COG).  
**Note:** This decision will require a CEQA finding.
11. February 16, 2012 or March 1, 2012 (Tentative dates; Council has not approved meeting schedule): City Council Hearing.
12. March 1, 2012 or March 8, 2012 (Tentative dates; Council has not approved meeting schedule): Continued City Council hearing (if necessary) and approval of ordinance effective 31 days after approval.
13. April 1, 2012: Ordinance becomes effective if approved by Council on March 1, 2012.
  - March 31 – April 10, 2012: Last day to challenge ordinance based on the CEQA determination (assumes an NOE or NOD has been filed within 5 days of the Council approval on March 1, 2012).
14. April 8, 2012: Ordinance becomes effective if approved by Council on March 8, 2012.
  - April 7 -12, 2012: Last day to challenge ordinance based on the CEQA determination (assumes an NOE or NOD has been filed within 5 days of the Council approval on March 1, 2012).

Note this analysis assumes the Airports Land Use Commission will hear this matter at its regularly scheduled meeting on February 6, 2012 and all other deadlines can be met.

Liability for the violation of the ordinance will include any person, corporation, partnership or other legal entity that owns, rents, leases, occupies, or has charge or possession of the real property that is in violation. Violators of the ordinance will be subject to civil prosecution, which may include, but is not limited to, administrative citation and civil injunction.



The proposed interim urgency ordinance is determined to be categorically exempt from environmental review, pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3). As this is an urgency ordinance, a super majority of five (5) affirmative votes will be required for adoption.

JPD:kf:dn  
12/1/11

Attachment: Interim Emergency Ordinance  
Aerial surveillance photos of marijuana grows (1-7)





A R M S T R O N G

PHOTO #1

CALIFORNIA AVE.





Photo #2



S Chestnut Ave

E Jensen Ave

Trail End Y

Tony's  
Tire Shop

AutoZone

©2011 Google - Imagery ©2011 Google; Map data ©2011 Google -





Photo #3





Location #3

Location #1

Location #2

Photo #4



LOCATION #1



Photo #5

N 6th St

N 6th St

N 6th St

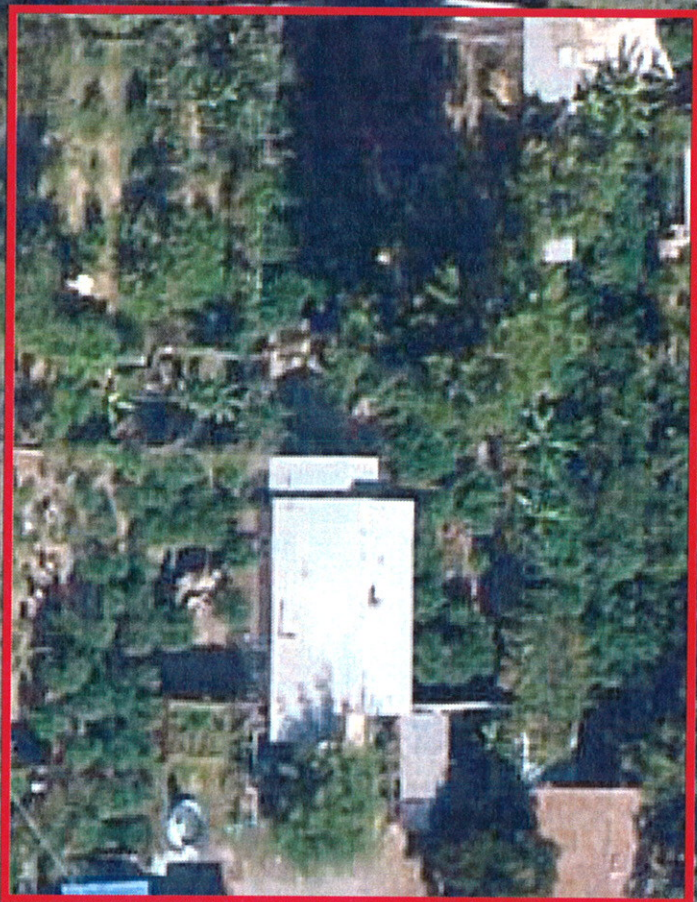


FLORADORA

EIGHTH

Photo #6

LOCATION #2





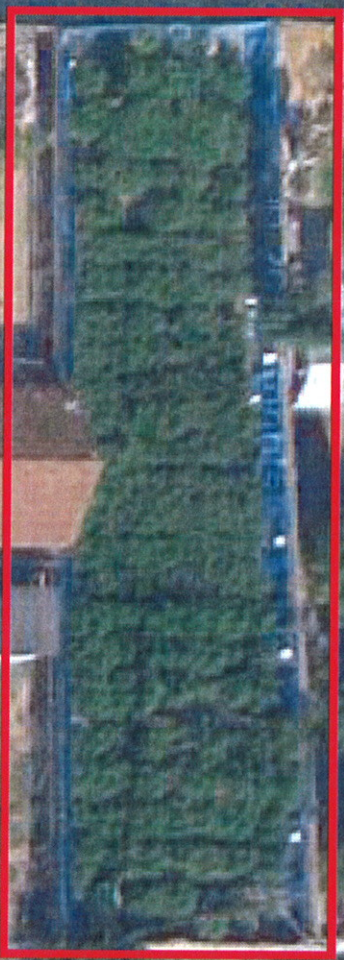


N 5th St

N 5th St

N 5th St

1400



LOCATION #3

E Floradora Ave

3505

Photo #7





BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN INTERIM URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, RELATING TO PLACING A MORATORIUM ON OUTDOOR CULTIVATION OF MEDICAL MARIJUANA IN THE CITY OF FRESNO PURSUANT TO GOVERNMENT CODE SECTION 65858 PENDING THE DEVELOPMENT OF STANDARDS AND REGULATIONS RELATING TO CULTIVATION AND DISPENSING AS A NEW LAND USE STANDARD.

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, et seq., and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, California Health and Safety Code Section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, the City has no explicit rules or regulations governing the outdoor cultivation of medical marijuana; and

WHEREAS, there is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Unless adopted on an urgency basis, outdoor cultivation could occur without any specific regulations applicable to it

and could create inconsistent incompatible land use. Cultivation of medical marijuana requires careful consideration and regulations to the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses; and

WHEREAS, adopting this urgency ordinance will allow the City time to research, draft and adopt a more permanent regulation regarding outdoor cultivation of medical marijuana; and

WHEREAS, the City of Fresno is the fifth largest City in California and has a substantial percentage of non-owner occupied rental properties and vacant foreclosures. The numerous rental properties and foreclosures have attracted unauthorized marijuana cultivation activities resulting in damage to these properties.

WHEREAS, federal law prohibits use of marijuana, regardless of the reason for such use; while state law decriminalizes under state law the use of medical marijuana on limited terms and conditions; and

WHEREAS, this Ordinance complies with the applicable state law, as well as imposes reasonable rules and regulations protecting public health, safety, and the welfare of the residents and businesses within the incorporated area of the City of Fresno; and

WHEREAS, The City of Fresno Police Department, City residents and other public entities have reported adverse impacts from the outdoor cultivation of medical marijuana within the City, including offensive odors, increased risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes; and

WHEREAS, the strong odor of marijuana plants, which increases as the plants mature, is offensive to many individuals and creates and an attractive nuisance, alerting people to the



location of valuable marijuana plants and creating an increased risk of crime; and

WHEREAS; children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children such as schools, parks, and similar locations; and

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City to modify the City of Fresno Municipal Code by adding regulations pertaining to the cultivation of medical marijuana within the City; and

WHEREAS, it is the Council's intention that nothing in this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, by permitting, or otherwise allowing, any activity which is lawfully and constitutionally prohibited under the Act.

WHEREAS, Mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law, it is the Council's intention that nothing in this Chapter shall be construed, in any way, to expand the rights of anyone to: use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal.

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WHEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES HEREBY  
ORDAIN AS FOLLOWS:

SECTION 1. URGENCY. Currently, the City has no explicit rules or regulations governing the

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Ordinance Re Enactment of Urgency Prohibition on Marijuana  
Cultivation in the City of Fresno Pending Development of Standards and Regulations

outdoor cultivation of medical marijuana. A number of outdoor medical marijuana cultivation sites have been established in the incorporated areas of the City of Fresno, and the City of Fresno Department of Public Works and Development and Resource Management Department have received inquiries from prospective operators of such sites about the cultivation in the incorporated areas of the City. There is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Unless adopted on an urgency basis, outdoor cultivation could occur without any specific regulation applicable to it and could create inconsistent and incompatible land use. Cultivation of medical marijuana requires careful consideration and regulation of the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses. Federal law prohibits use of marijuana, regardless of the reason for such use; while state law decriminalizes the use of medical marijuana on limited terms and conditions. This Ordinance both complies with applicable state law, and imposes reasonable rules and regulations which protect the public health, safety and welfare of the residents and businesses within the incorporated area of the City of Fresno. By adopting this urgency ordinance, it will allow the City to research, draft and adopt a more permanent regulation of outdoor medical marijuana cultivation.

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## SECTION 2. PUBLIC THREAT TO HEALTH, SAFETY OR WELFARE.

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical

purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. Further, effective January 1, 2004, the State Legislature enacted Senate Bill (SB) 420 to clarify the scope of The Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420; and

B. The Council finds that there is a current and immediate threat to the public health, safety or welfare posed by the location and outdoor cultivation of medical marijuana, and further finds:

C. The Compassionate Use Act expressly encourages federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. The Council finds that the safe distribution of marijuana, as contemplated by the Compassionate Use Act, includes the safety of all the citizenry of the City, not only users of medical marijuana. To find otherwise would elevate the rights of some individuals who use medical marijuana over the safety of others.

D. Further, the Compassionate Use Act expressly states that nothing in that act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversions of marijuana for nonmedical purposes.

E. The Medical Marijuana Program Act, Health and Safety Code Sections 11362.7 et seq., expressly states that nothing in the act shall prevent a City or other local governing board from adopting and enforcing laws consistent with the Medical Marijuana Program Act. The Council finds that this ordinance is consistent with the Medical Marijuana Program Act in that it advances the goals of the Compassionate Use Act by allowing for the development of a plan for

the safe cultivation and distribution of medical marijuana.

F. Medical marijuana and nonmedical marijuana are indistinguishable when on the marijuana plant.

G. There have been many reports of violence incidental to the outdoor cultivation of marijuana, whether medical or nonmedical. Recently, there were reports of five shootings within the City of Fresno relating to marijuana. One shooting resulted in a death and the voluntary manslaughter conviction of the shooter/medical marijuana grower. This resulted in a 25 year prison sentence to the convicted, medical marijuana grower.

H. Reports of marijuana related threats to neighboring landowners and other citizens have escalated in recent months. The unregulated outdoor cultivation of medical marijuana poses a current and immediate threat to public health, safety and welfare. During the 2010 fall harvesting season, the Fresno Police Department received 52 complaints from citizens on the Narcotics Hotline specifically complaining of the strong odor of marijuana and increased pedestrian/vehicular traffic. Outdoor marijuana cultivation attracts a considerable amount of non-residents driving or walking into these neighborhoods. Peak harvest starts at the beginning of October until the end of October or early November. During this time, marijuana buds are heavy with THC (delta-9-tetrahydrocannabinol) resin and produce a strong and noticeable odor. Children are subjected to the heavy odor of marijuana and increased pedestrian/vehicular traffic while walking to and from nearby schools. As marijuana crops are typically planted after harvest, the next crop will be planted November of 2011. During the first nine months of 2011, the Fresno Police Department received 195 complaints from citizens specifically complaining of marijuana cultivation. Without this moratorium plantings of new crops of marijuana will occur



without the City's ability to control as to location and manner of growing marijuana.

I. The City is currently working on development of ordinances to address issues relating to the cultivation of medical marijuana. Until such time as those ordinances are adopted, it is necessary to prohibit the outdoor cultivation of medical marijuana.

### SECTION 3: INTENTIONS.

A. Council is mindful of the fact that marijuana possession and use is prohibited under federal law and partially decriminalized under state law. It is the Council's intention that nothing in this Ordinance shall be deemed to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act. Council's intention is that nothing in this Chapter shall be construed, in any way, to expand the rights of anyone to: use or possess marijuana under state law; engage in any public nuisance; violate federal law, or engage in any activity in relation to the cultivation, distribution, or consumption of marijuana that is otherwise illegal.

B. The outdoor cultivation of all marijuana in the incorporated areas of the City of Fresno is hereby prohibited pending the development of standards and regulations relating to cultivations; and

C. Violation of this Ordinance shall be deemed a public nuisance pursuant to Fresno Municipal Code section 10-605(I), and also shall be deemed a misdemeanor; and

D. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061 (b) (3).

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a

SECTION 5. EFFECTIVENESS. This Interim Urgency Ordinance No. 11-\_\_\_\_\_ is hereby adopted to protect the public health, safety and welfare and is adopted as an urgency measure pursuant to the provision of Government Code section 65858 and shall become effective and in full force and effect upon adoption for a term of forty-five days, unless extended by the Council for a maximum of ten (10) months and fifteen (15) days and shall remain in effect unless earlier terminated or extended.

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AYES :

NOES :  
ABSENT :  
ABSTAIN:

Mayor Approval: \_\_\_\_\_, 2011

Mayor Approval/No Return: \_\_\_\_\_, 2011

Mayor Veto: \_\_\_\_\_, 2011

Council Override Vote: \_\_\_\_\_, 2011

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Michael D. Flores, Deputy

MDF:ns [57138ns/ORD]- 12/1/2011